

## Cody, Karen

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**From:** Jackson, Brad  
**Sent:** Wednesday, April 16, 2014 1:14 PM  
**To:** Cody, Karen  
**Subject:** FW: Calvert City - dispute resolution  
**Attachments:** 2014.03.07 GR-P1 Ltr to EPA.pdf

**From:** Jackson, Brad  
**Sent:** Monday, March 10, 2014 10:14 AM  
**To:** Johnson, MaryC  
**Subject:** FW: Calvert City - dispute resolution

FYI:

**From:** Schaub, Ernie (POC) [<mailto:Ernie.Schaub@Polyone.com>]  
**Sent:** Friday, March 07, 2014 2:18 PM  
**To:** Hill, Franklin; Monell, Carol  
**Cc:** Jones, Kim A; Jackson, Brad; Logsdon, Ken (KY DWM); Sheridan, Kevin (Westlake); Amig, Bruce (Goodrich)  
**Subject:** Calvert City - dispute resolution

Mr. Hill / Ms. Monell,

Please see the attached letter from PolyOne & Goodrich regarding dispute resolution.

Thank you.  
ernie

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### Ernie Schaub

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07 March 2014

*via email and Federal Express*

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Dear Mr. Hill and Ms. Monell:

PolyOne Corporation and Goodrich Corporation write to object to the request in Westlake Vinyls, Inc.'s February 26, 2014 letter to be "consulted" in the dispute resolution process. Westlake has not invoked dispute resolution and has no right to participate in the dispute resolution process under the AOC for the Calvert City Site. Moreover, any decision to include Westlake in the process would only provide another forum for the kind of counterproductive advocacy that Westlake's February 26 letter exemplifies.

We also write to correct the false (and irrelevant) statements in Westlake's letter. Westlake's letter purports to respond to PolyOne and Goodrich's decision to invoke dispute resolution under Section XV of the December 2009 Administrative Order on Consent (AOC). In fact, however, the letter is yet another attempt by Westlake to use the RI process as a platform to advance arguments that it believes will support its position in future cost allocation proceedings.

In contrast, PolyOne and Goodrich worked in good faith, up to the point of the EPA Work Takeover, to develop a consensus RI Report that would meet all of EPA's requirements. Westlake's letter mischaracterizes this process in numerous ways:

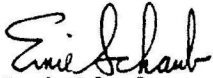
- (1) **NAPL Source Zone Delineation:** Westlake's assertions are incorrect. The delineation of NAPL source zones in the PolyOne/Goodrich Draft RI Report is based on thousands of groundwater and soil samples and visual indicators confirming the areas of NAPL presence, and the PolyOne/Goodrich Report accurately documents examples of NAPL migration pathways at the Site.
- (2) **PolyOne/Goodrich's Use of Potential NAPL Source Zones in July 2013 RI:** The delineation of potential NAPL source zones by PolyOne and Goodrich conforms to the NAPL indicator definitions presented in the February 2012 Respondent memorandum, and to the 2009 EPA guidance. The EPA 2009 DNAPL delineation guidance (EPA, 2009) indicates that *potential* NAPL source zones are required to be delineated, and *confirmed* zones may not be warranted when a containment remedy is appropriate for a Site. The February 2012 Respondents memorandum suggests that both *potential* and *confirmed* zones would be delineated; however, given the agreement of all parties to focus on a containment remedy for the site, PolyOne and Goodrich's July 2013 RI presented only *potential* NAPL source zones. To the extent that NAPL source zones are to be used for delineation of the Target Containment Zone, then *potential* NAPL source zones must be included in the RI Report, as they were in the PolyOne/Goodrich Draft RI Report.

- (3) **PolyOne/Goodrich's Compliance with EPA Data Use Guidance:** EPA has stated that Site characterization is complete using RI data. Westlake's challenge to the data used by PolyOne and Goodrich fails to note that the PolyOne/Goodrich Draft RI Report excluded pre-RI third party indicators of NAPL absence based on oral and written directives from EPA.
- (4) **The Presence of NAPL Source in the Terrace:** PolyOne and Goodrich's conclusion that significant NAPL source zones exist in the terrace is based on Site NAPL indicators and Site-specific mass calculations, which are set forth in Section 4.11 of the PolyOne/Goodrich Draft RI Report.
- (5) **The Presence of Point Bars and the "Intermediate Confining Zone":** There are multiple lines of evidence supporting the presence of point bars at the Site and existence of an "intermediate confining zone." With respect to the existence of point bars, soil borings and soil survey results at the Site reveal distinctive features produced by point bar sequences (PolyOne/Goodrich Draft RI Report § 3.4.2-3.4.3 & Figures 3.10-3.11). With respect to the existence of the intermediate confining zone, this zone is visible in geologic cross-sections of the Site, has been confirmed in pumping tests, and is consistent with Site data showing that most of the contaminant mass has not migrated below this zone. Although this confining layer is not continuous, it clearly exists and is extensive across the Site.
- (6) **Correction of Errors in the Site Geology Field Log:** PolyOne and Goodrich did not alter an agreed-upon Site geology field log. PolyOne's expert geologist made clear that he disagreed with inaccurate statements that Westlake's expert insisted on including in the field log. To resolve the disagreement, PolyOne/Goodrich and Westlake agreed that laboratory sample analysis would be used to resolve disputes regarding the features described in the field log. The PolyOne/Goodrich Draft RI Report included a version of the field log that, based on the laboratory data, corrected errors in the original log.
- (7) **Shallow Clayey Silt Unit Permeability:** With respect to the issue of the shallow clayey silt unit permeability, laboratory measurements indicate there is a large range in permeability for the shallow clayey silt unit. Moreover, laboratory measurements have been demonstrated to underestimate larger-scale permeability in soils, such as those at the Site, where fractures, rootholes, and bioturbation provide preferential migration pathways.
- (8) **Infrastructure Pathways for NAPL Migration:** NAPL migration through infrastructure pathways has been observed on numerous occasions at the Site, including migration into storm sewers after the October 2001 "Halloween Spill," the observation of NAPL at the bottom of gravel fill during an excavation at the Contaminated Water Storage Tank in 2009, and preferential pathways in earthen berms that have been documented by Westlake's own consultants (*e.g.*, EKI, 2003). In addition, there is extensive underground infrastructure at the Site, which provides numerous potential pathways for the migration of NAPL from releases. EPA guidance requires that both known and potential pathways be considered in the RI (Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA, Oct. 1988, § 2.2.2.2, at 2-7). The PolyOne/Goodrich Draft RI Report is consistent with this guidance.
- (9) **PolyOne/Goodrich's Pond System Material Balance:** Westlake also asserts that "PolyOne and Goodrich do not accurately describe the use and operation of Pond 1A." This vague assertion appears to be connected to an inaccurate statement in Westlake's Draft RI Report regarding the mass of EDC discharged to Pond 1A before closure of the pond system at the Site. Westlake claims that 7 million pounds of EDC per year were discharged to Pond 1A. This conclusion is incorrect, and is inconsistent with Westlake's own consultant's pond material balance calculation (Letter to K. Sheridan from E. Schaub, Nov. 27, 2013). An accurate pond material balance is provided in Version 2 of the PolyOne/Goodrich Draft RI Report (Section 1.2.8), which concludes that an average of approximately 2.5 million pounds of EDC per year entered the ponds from the sumps between 1959 to 1987 (Letter to K. Sheridan from E. Schaub, Jan. 29, 2014).
- (10) **The PolyOne/Goodrich Site Release History:** PolyOne and Goodrich's release history provides a complete account of releases from both Goodrich and Westlake operations. In contrast, Westlake's version of the release history either ignores or understates important releases after 1990, when Westlake began operating the EDC/VCM plant, and inaccurately implies that Westlake releases were completely remediated.

In sum, Westlake continues to assert litigation-based positions that are a distraction from the goal of remediating the Site. Westlake's gross mischaracterization of the PolyOne/Goodrich Draft RI Report reflects errors in its own Draft RI Report, and belies Westlake's assertion that its RI Report is "accurate."

We look forward to meeting with you to resolve the issues raised in our February 18<sup>th</sup> letter. We also look forward to continuing to work with EPA to prepare the Feasibility Study and to select, design, and implement a final remedy for the Site.<sup>1</sup>

Sincerely,



Ernie Schaub  
Manager, Environmental Services  
PolyOne Corporation



Bruce Amig  
Manager, Remedial Programs  
Goodrich Corporation,  
a UTC Aerospace Systems Company

cc: Brad Jackson, U.S. Environmental Protection Agency (via email & FTP)  
Kim Jones, EPA Regional Counsel (via email)  
Ken Logsdon, Kentucky Division of Waste Management (via email & FTP)  
Kevin Sheridan, Westlake Vinyls, Inc. (via email & FTP)

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<sup>1</sup> For the reasons stated in PolyOne's January 10, 2014 letter to EPA, PolyOne and Goodrich will not support a Non-Time Critical Removal Action that involves some form of barrier wall or pond closure. The installation of a barrier wall and the closure of Ponds 1A and 2 will be considered as part of the final remedy and should be evaluated through the ongoing Feasibility Study and the ordinary CERCLA process. Implementation of a Non-Time Critical Removal Action at the Site is not supported by the NCP, EPA Guidance, or the Human Health and Ecological Risk Assessments agreed to by all Respondents.

